

## APPEAL NO. 010112

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on December 13, 2000, The hearing officer resolved the disputed issues by determining that the appellant (claimant) is not entitled to supplemental income benefits for the first and second quarters. The claimant has appealed, contending that her evidence established that she made good faith efforts to obtain employment during the respective qualifying periods. The respondent (carrier) urges the sufficiency of the evidence to support the challenged findings.

### DECISION

A timely appeal not having been filed by the claimant with the Texas Workers' Compensation Commission (Commission) and the jurisdiction of the Appeals Panel not having been properly invoked, the decision and order of the the hearing officer have become final.

Section 410.202(a) provides that "[t]o appeal the decision of a hearing officer, a party shall file a written request for appeal with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party." Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that a request for review shall be presumed to be timely filed if it is: (1) mailed on or before the 15th day after the date of receipt of the hearing officers decision; and (2) received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be complied with for an appeal to be timely Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994.

Records of the Commission reflect that the hearing officer's decision was distributed to the parties on December 20, 2000, under a cover letter of the same date. Rule 102.5(d) provides in part that, unless the great weight of evidence indicates otherwise, the claimant is deemed to have received the hearing officer's decision five days after it was mailed. However, the claimant states that she received the hearing officer's decision on December 22, 2000. Accordingly, we count the claimant's 15 days to mail her appeal and the 20 days for its receipt by the Commission from December 22, 2000. The envelope containing the claimant's appeal reflects that while it was mailed on January 3, 2001, which was within the 15-day period, it was not received by the Commission until January 16, 2001, which is five days beyond the 20th day or January 11, 2001. The envelope containing the claimant's appeal reflects that she mailed her appeal to a post office box number no longer used by the Commission despite the mailing instructions in the Commission's cover letter of December 20, 2000, stating the correct mailing address.

The hearing officer's decision and order have become final pursuant to Section 410.169.

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Kenneth A. Huchton  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge